

A Guide to Safer Recruitment for Charitable Organisations



Introduction

The Charity Commission guidance, *Safeguarding and protecting people for charities and trustees (Safeguarding Guidance)*, requires trustees to take reasonable steps to **protect from harm** anyone who comes into contact with their charity.

This includes making sure that the trustees, staff and volunteers they appoint are suitable and legally able to act in their positions.

Therefore, all charities, regardless of their size, sector in which they operate or their objectives, should consider how to recruit lawfully and appropriately for the roles they are seeking to fill.

Doing so effectively is likely to involve careful consideration of a number of relevant factors, relating to the charity and its operations, the role, the applicable legal framework and the level of risk.

The purpose of this guide is to help charities establish **reasonable and proportionate recruitment procedures** and thereby discharge their duties under the Safeguarding Guidance.

There are significant differences among charitable organisations which arise out of their size, resources, objectives, beneficiaries and the sector in which they operate. Therefore, it is not feasible to address every possible recruitment situation in this guide, but we include:

- a framework to enable you to plan recruitment and document your charity's processes and decision-making
- a narrative of the possible checks you may wish to undertake



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The Background of Safer Recruitment

The concept of 'safer recruitment' was developed out of recommendations made in the Bichard Inquiry Report following the Soham tragedy in 2002, in which two ten year old girls were murdered by a school caretaker, Ian Huntley.

At that time many schools did not have established professional recruitment procedures and the vetting of applicants to determine their suitability to work with children was sporadic.

The Bichard Report recommended:

- a **registration scheme** for all those wishing to work with children or vulnerable people
- the introduction of a **national police intelligence system**
- a **clear code of practice for information-sharing** and training for school governors and heads on **interviewing and safer selection principles**

These principles have since been codified and extended for those who work with children and adults at risk, and **offer best practice guidance for charities** when they consider their own recruitment processes.



How Can We Help You?

We can help your charity produce a **bespoke recruitment policy and a recruitment pack** containing the other documents mentioned in this guide. These include:

- a recruitment checklist
- application form
- shortlisting assessment form
- interview assessment form
- reference request form
- letter offering employment

The Charity Commission also expects charities to have **policies and procedures in place** for protecting people and safeguarding (where appropriate).

These include:

- a safeguarding policy
- a code of conduct for staff and volunteers
- a policy on how your charity handles allegations or incidents
- a health and safety policy
- a digital safety policy
- disciplinary and whistleblowing policies

For further information about how we can help your charity produce these policies, please contact Tabitha Cave or Richard Hewitt.





Recruitment Practice

The Safeguarding Guidance states that charities “*must make sure that trustees, staff and volunteers are **suitable and legally able to act in their positions***”. It also states that trustees “*must take reasonable steps to **protect from harm** people who come into contact with your charity*”.

Therefore, a charity must approach the recruitment process in a way which allows it to comply with any applicable legal requirements to assess suitability for a particular role, and more broadly, take recruitment decisions that are **reasonable and proportionate** for that charity.

What is reasonable will depend on a number of factors, including:

- any legal requirements with which the charity has to comply when recruiting for the role
- the charity and its operations
- the role being recruited for and the identification of associated risk factors

Recruitment Process Best Practice

A structured, professional recruitment process is more likely to be warranted for larger charities with the resources to fund such a process. However, it is not reasonable to expect all charities to follow the same process for all applicants. Charities should therefore seek to establish a recruitment process that is **appropriate to their circumstances**.

A **full, best practice**, recruitment process, may include the following:

- advertisement of the role
- a job description and person specification for the role
- the development and use of an application form specific to the charity
- a shortlisting process that is documented and objective
- an interview by a panel (ie by more than one person)
- notes from the interview which are used to inform an objective selection decision
- written rejection of unsuccessful candidates
- a formal written offer of employment

Once an appointment decision is taken, this should then be supplemented by **appropriate pre-appointment vetting checks**, which may include all or any of the following:

- verification of identity
- verification of right to work in the UK
- verification and/or declaration that an applicant is not legally disqualified from acting in the role
- verification of qualifications which are required for the post or which influence the appointment decision
- scrutiny of education and employment history to identify any gaps or periods spent outside the UK
- the receipt of references which the charity deems to be satisfactory (if the role being recruited for is one working with children or adults at risk, a reference should be obtained from the last employer where the individual worked in such a role, with the reason they left that employment being requested. This should be supplemented by at least one other reference from a former employer)
- scrutiny of social media profiles
- verification of medical fitness (if required for the role)
- a DBS disclosure, the result of which the charity considers satisfactory (if the role is eligible for a DBS check)*
- a check of the Children's Barred List or the Adults' Barred List (if the role is eligible for this check)*

*Please see page 14 on 'DBS/Criminal records checks' for further information on eligibility.



The Legal Requirements

Statutory Recruitment Obligations

You must first consider whether your charity is legally required to recruit for the role in a particular way.

For example, those charities which operate in the education or the health and social care sectors are subject to legislation which requires them to have **established professional recruitment procedures** in place, and to carry out specified checks on the people they appoint before those individuals can work for or represent the charity.

If minimum legal requirements apply to the recruitment for particular roles within your charity, then the starting point is to ensure those requirements are met.



Trustees

There are legal requirements for all charities to observe when recruiting trustees or senior managers.

Under the *Charities Act 2011*, **it is a criminal offence** for a person to act as a trustee or senior manager of a charity **if they are disqualified from doing so**. A person is considered to be a charity trustee for this purpose if they are one of the people who have general control and management of the administration of the charity. Senior managers include those employees who report directly to the charity trustees or have responsibility for the overall management and control of the charity's finances.

The *Charities Act 2011* sets out the grounds on which a person can be disqualified from acting as a trustee or senior manager. These include various spent and unspent criminal offences and other sanctions. The disqualifying reasons are set out in the Charity Commission guidance, *Automatic disqualification rules for charity trustees and charity senior positions*.

There is no single list or register that covers all of the disqualification criteria and a mixed approach to checking whether a person is disqualified is therefore recommended. This can be achieved by:

- requiring existing and prospective trustees or senior managers to sign a declaration to confirm whether, to the best of their knowledge, they are subject to any of the disqualification criteria. The Charity Commission has published a **trustee eligibility declaration form** that can be used for this purpose.
- checking whether an existing or prospective trustee or senior manager is named on any of:
 - the **bankruptcy and insolvency register**
 - the **register of disqualified directors** maintained by Companies House
 - the **register of persons who have been removed as a charity trustee**

A person who is disqualified may apply to the Charity Commission for a waiver of the disqualification. If granted, the waiver would allow that person to take up a trustee position. However, the current trustees should consider carefully whether or not such a person is suitable for the role.



Employees

Charities in the UK, regardless of their work, **must not employ people in their domestic operations who do not have the right to work in the UK.**

All charities must therefore check that applicants for employment have the right to work in the UK before they allow that person to carry out paid work for them.

The **Government publishes guidance** on how an employer can satisfy itself that their employees are entitled to work in the UK.

This check will also act as a check of the applicant's identity.

Carrying out **right to work checks, and retaining evidence** that they have been carried out, will give a charity protection from prosecution if it later transpires that an employee does not have the right to work in the UK.

We recommend that charities also carry out right to work checks on individuals who are categorised as 'workers' rather than employees.





Other Checks

Where checks are not required by law, each charity must decide what is **appropriate and proportionate** in terms of a recruitment process and the checking of trustees, staff and volunteers.

Over the next pages, we set out the **factors to consider** when deciding what is appropriate.

If your charity is not subject to specific recruitment requirements, there are no other mandatory checks that must be carried out when appointing trustees, employees or volunteers.

Some positions will be 'eligible' for Disclosure and Barring Service (DBS) checks, but this does not of itself impose an express legal requirement to carry out such a check.

The Charity and Its Operations

The sector in which a charity operates and who its beneficiaries are should be primary considerations in assessing what type of recruitment process and checks are appropriate.

A charity that **works with children or adults at risk will be expected to do more**, particularly if the role being recruited for enables the individual to have direct contact with those beneficiaries and/or to undertake regulated activity as defined by the *Safeguarding Vulnerable Groups Act 2006*.

Larger charities with greater resources will also be expected to do more to show they have taken a reasonable approach to recruitment compared to small charities with far less resource.

We suggest charities **consider the following questions:**

- Would a third party consider the recruitment process to be reasonable given the area in which your charity operates, its size and resources and the particular role for which you are recruiting? For example, if a charity is comprised entirely of volunteers, does not work with vulnerable groups and has few resources, is it reasonable to expect that charity to have an established recruitment process at all?
- If a trustee, member of staff or volunteer caused harm to someone who came into contact with your charity, or to your charity's reputation, would you be able to confidently state that you had done all that you reasonably could to ensure that the individual was suitable to act in that position on behalf of the charity?



Risk Factors

It is important to assess the role that is to be recruited for and to consider the **potential risk factors** that are applicable.

The more risk factors that apply, the more that is prudent from a recruitment perspective.

Factors that are likely to lead to an **increased risk** to the charity include the following:

- the individual will be working directly with beneficiaries or members of the public
 - the individual will be working with people who are vulnerable (children or adults at risk)
 - through their work the individual will have access to:
 - the charity's premises
 - confidential information
 - personal data of individuals
- money or finances
 - medication, drugs or hazardous substances
 - the individual will be working with people who are vulnerable (children or adults at risk)
 - the individual will be working alone and/or on an unsupervised basis and/or will be supervising others
 - the individual will be working overseas on behalf of the charity
 - will the actions of the individual have significant potential to impact negatively on the charity or its reputation

DBS/Criminal Records Checks

The Safeguarding Guidance states that “trustees should **risk assess all roles**, taking into account the working environment, to determine if they are eligible for a [DBS] check and if so, at what level”.

There are **four levels of DBS disclosure** that are potentially available when appointing trustees, staff and volunteers.

Basic Check

There are **no eligibility criteria for a basic check**. They can therefore be used for any position or purpose. A basic disclosure certificate will contain details of convictions and cautions from the Police National Computer (PNC) that are considered to be unspent (current) under the terms of the *Rehabilitation of Offenders Act (ROA) 1974*.

As of July 2021, a basic check **costs £23**, including for a volunteer. An applicant can obtain a basic DBS check directly from the DBS.



Standard Check

In order to obtain a standard check, the role or position to which the application relates must **satisfy the relevant eligibility criteria**.

It is a criminal offence to knowingly obtain a standard level DBS check for a role or position that does not satisfy the eligibility criteria. To be eligible for a Standard check the work must be specifically mentioned in the *Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975*.

Eligible positions include roles in the legal profession, judiciary, police, work in a children's home or residential family centre, work for the purposes of an adoption service, work connected to a childminder agency and particular roles with the RSPCA.

A standard disclosure certificate contains details of all spent and unspent convictions, cautions, reprimands and final warnings from the PNC.

In order to obtain a standard check, an organisation must either be registered with the DBS to submit applications for DBS checks (a registered body), or use an umbrella body to submit applications on their behalf.

To be a registered body, an organisation must submit 100 paper DBS applications, or 1,500 electronic applications, in a 12 month rolling period. An umbrella body will charge an administrative fee (circa £7 - £12) for submitting a DBS application in addition to the cost of the check.

As of July 2021, a standard check **also costs £23** (plus any administrative fee from the umbrella body). The DBS does not charge for standard checks for unpaid voluntary roles.

A list of umbrella bodies can be accessed on the [Government website](#).

Enhanced Check

In order to obtain an enhanced check, the position must satisfy **additional eligibility criteria**. They are available for specific duties, positions and licences included in both the *Rehabilitation of Offenders Act 1974 (Exceptions Order 1975)* and the *Police Act 1997 (Criminal Records) Regulations*.

Eligible work includes regularly caring for, training, supervising or being solely in charge of children, specified activities (including care, supervision, training, teaching, instruction, assistance, advice, guidance, representation and advocacy services) with adults who are in receipt of health care or social care services. A trustee of a charity for adults whose staff engage in such specified activities is also eligible for an enhanced DBS check.

An enhanced disclosure certificate contains the same information as a standard check and any **additional information held by local police** that is considered relevant to the role.

In order to obtain an enhanced check, an organisation must either be a registered body or use an umbrella body.

As of July 2021, an enhanced check **costs £40** (plus any administrative fee from the umbrella body). The DBS does not charge for enhanced checks for unpaid voluntary roles.



Enhanced Check, With a Check of the Children's and/or Adults' Barred Lists

An enhanced check with barred list information is only generally **available where an applicant's role involves regulated activity with children or adults at risk**, although they can be undertaken for a small number of other roles which are listed in the *Police Act 1997 (Criminal Records) Regulations*, such as taxi driving and prospective adoptive parents.

As with enhanced checks, they must be requested by a registered body or through an umbrella body. As of July 2021, the **cost is £40** (plus any administrative fee from the umbrella body) unless the check is for an unpaid voluntary role.

Which DBS Check Is Appropriate?

The Government has produced an **online DBS eligibility checker tool** that can be used to find out which level of DBS check is appropriate.

The Safeguarding Guidance states that a charity should always obtain a standard check, enhanced check or enhanced check with barred list information when a role is eligible for one.

Charities are permitted to accept an existing DBS check from an individual that was obtained by another organisation. However, DBS certificates are effectively out of date as soon as they have been produced, as they will not contain any information that is generated after the date of issue.

Charities must therefore consider whether they are happy to accept an existing DBS check or whether they require a new and up-to-date one. Charities should consider the age of the DBS check, what level it is, the type of work it was obtained for and what else is known about the individual.

Charities should also consider whether to repeat DBS checks at regular intervals after appointment, although there is no requirement to do so.

Some organisations and local authorities have a policy of repeating DBS checks every three years.





The Recruitment of Ex-Offenders

If an applicant has a criminal record this will **not automatically bar them from employment with your charity.**

However, you are entitled to decide whether the disclosure of criminal records information affects a person's suitability to work for your charity. Applicants with a criminal record should be **treated equally and fairly**, although charities should be aware that **it is not possible to discriminate against a person on the basis of their criminal record alone**. Charities are therefore entitled to reject applicants if they consider that their criminal records history makes them unsuitable to work for the charity.

It is unlawful to allow a person to work in a role with children or adults at risk if that person is named on the Children's Barred List or the Adults'

Barred List. It is a criminal offence for any person who is barred from working with children or adults to apply to carry out such work.

A charity that is recruiting for a role working with children or adults at risk must make a report to the police and/or the DBS if it:

- receives an application from a person who is barred from working in the role
- is provided with false information in an application, or in support of an application
- has serious concerns about an applicant's suitability to work with children or adults at risk

Assessment Criteria

In the event that criminal records information is volunteered by an applicant during the recruitment process or obtained through a DBS disclosure, **a charity should consider the following factors before reaching a recruitment decision:**

- whether the conviction or other matter revealed is relevant to the position in question
- the seriousness of any offence or other matter revealed
- the length of time since the offence or other matter occurred
- whether the applicant has a pattern of offending behaviour or other relevant matters
- whether the applicant's circumstances have changed since the offending behaviour or other relevant matters occurred
- the circumstances surrounding the offence and the explanation(s) offered by the applicant

It is good practice for a charity to **carry out and document a risk assessment with reference to the above factors** (and others that are relevant to your charity).

In addition, the charity [Unlock](#) provides assistance to individuals and employers on criminal records matters.



Document Retention

Unsuccessful Applicants

We recommend that charities **retain information from the recruitment process for up to six months after an appointment decision is taken**. This is the timeframe in which an unsuccessful applicant may bring a discrimination claim in the employment tribunal. Retaining evidence of the decision taken during a recruitment process will assist a charity in defending any such claims. After six months a claim is unlikely to be brought and the charity can securely destroy information relating to unsuccessful applicants.

Successful Applicants

The information from the recruitment process should be **retained for the duration of employment**. After employment ends there are different retention periods for different categories of information. A general rule is to **retain recruitment documentation for six years after employment ends** as this is the period in which breach of contract claims can be lodged. Charities will be justified in retaining information relating to the safeguarding of children or adults at risk for much longer periods.

DBS Certificates

Employers must retain DBS certificates only in accordance with the DBS Code of Practice. This states that **DBS checks must be kept in accordance with data protection principles**. DBS checks are obtained as part of the process of determining an individual's suitability. Once a person is appointed, a decision on their suitability has been taken and the purpose for which the check was obtained has been satisfied.

At that point there is **no longer a justification to retain the DBS certificate** and it should be returned to the individual who is the subject of the check, with any copies being securely destroyed. It is possible to retain the top section of a DBS certificate, which contains the individual's name and address but no criminal records information, for the duration of employment as evidence that the check was undertaken.

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